

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

**Labor Standards Bureau**

**Office of Hearings and Adjudication  
COMPENSATION REVIEW BOARD**



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**CRB No. 08-199**

**ALVESTER BROWN,**

**Claimant–Respondent,**

**v.**

**BLAKE CONSTRUCTION CO. AND AETNA CASUALTY & SURETY CO.,**

**Employer/Carrier–Petitioner.**

Appeal from an Order of  
Claims Examiner Myrna Parada  
OWC No. 059059

Roger S. Mackey, Esquire, for the Employer/Carrier-Petitioner (hereinafter “Petitioner”)

Alvester Brown, *pro se*, for the Claimant-Respondent (hereinafter “Respondent”)

Before E. COOPER BROWN, *Chief Administrative Appeals Judge*, MELISSA LIN KLEMENS,<sup>1</sup> and  
JEFFREY P. RUSSELL *Administrative Appeals Judges*.

MELISSA LIN KLEMENS, *Administrative Appeals Judge*, for the Compensation Review Panel:

**DECISION AND ORDER**

**JURISDICTION**

Jurisdiction is conferred upon the Compensation Review Board (hereinafter “CRB”) pursuant to D.C. Official Code §§32-1521.01 and 32-1522 (2004), 7 DCMR §230, and the Department of Employment Services Director’s Directive, Administrative Policy Issuance 05-01 (February 5, 2005). Pursuant to §230.04, the authority of the CRB extends over appeals from compensation orders, including final decisions or orders granting or denying benefits, by the Administrative Hearings Division or the Office of Workers’ Compensation (hereinafter “OWC”).

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<sup>1</sup> Administrative Law Judge Klemens is appointed by the Director of DOES as an Interim Board Member pursuant to DOES Administrative Issuance No. 09-02 (December 8, 2008) in accordance with 7 DCMR §252.2 and Administrative Policy Issuance No. 05-01 (February 5, 2005).

## OVERVIEW

In November 1984, Respondent injured his left foot when he stepped on a nail. Respondent received temporary total disability benefits, permanent partial disability benefits, and permanent total disability benefits.

In February 2002, the parties filed with the OWC a Joint Petition for approval of a full and final settlement. On March 26, 2002, a Compensation Order Approval of Lump-Sum Settlement Pursuant to Section 32-1501 issued.

In response to Respondent's contact with the OWC, an Order to Show Cause issued on April 21, 2008. At that time, Respondent asserted that although the lump-sum settlement had been approved in the amount of One Hundred Thousand Dollars and No Cents (\$100,000.00), he had received a check in the amount of Ninety-nine Thousand Four Hundred Sixty-eight Dollars and Fifty-seven Cents (\$99,468.57), allegedly Five Hundred Thirty-one Dollars and Forty-three Cents (\$531.43) less than the approved lump-sum payment. Consequently, Respondent requested interest and penalties on the purported deficiency.

A Supplementary Compensation Order Declaring Employer in Default issued on July 10, 2008 (hereinafter "SCO"). Claims Examiner Myrna Parada (hereinafter "CE") determined Petitioner had failed to make full payment of the settlement amount; therefore, Petitioner was held liable for penalties and interest. The CE ordered Petitioner to pay Respondent Nine Hundred Seventy-seven Dollars and Fifty-five Cents (\$977.55).

Petitioner filed an Application for Review and Memorandum of Points and Authorities (hereinafter "AFR") on July 21, 2008. The AFR was resubmitted on August 1, 2008 because the original AFR did not include the exhibits referenced therein. As grounds for this appeal, Petitioner alleges as error the SCO is contrary to the law and should be reversed.

Respondent filed no opposition to the AFR.

Upon review of the record, the Panel vacates the SCO.

## ANALYSIS

Upon review of an appeal from the OWC, the CRB must affirm the order under review unless it is determined to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *See*, 6 Stein, Mitchell & Mezines, ADMINISTRATIVE LAW, §51.93 (2001).

In the case under review, the parties entered into a settlement agreement. Pursuant to the terms of that settlement agreement, Petitioner agreed to pay and Respondent agreed to accept the amount of One Hundred Thousand Dollars and No Cents (\$100,000.00). In addition, at the time the parties reached an agreement, Respondent was receiving permanent total disability payments; payment of permanent total disability benefits was to continue until approval of the settlement agreement.

On or about February 19, 2002, a Joint Petition for approval of the settlement agreement was filed with the OWC. On March 26, 2002, the settlement agreement was approved by the OWC.

§32-1515(f) of the District of Columbia Workers' Compensation Act of 1979, D.C. Code, as amended, §32-1501 *et seq.* (hereinafter "Act") states

[i]f any compensation, payable under the terms of an award, is not paid within 10 days after it becomes due, there shall be added to such unpaid compensation an amount equal to 20% thereof, which shall be paid at the same time as, but in addition to, such compensation, unless review of the compensation order making such award is had as provided in §32-1522 and an order staying payments has been issued by the Mayor or court. The Mayor may waive payment of the additional compensation after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

Petitioner had until April 5, 2002 to fund the settlement; in addition, as of March 26, 2002, Respondent no longer was entitled to permanent total disability benefits.

Respondent does not dispute that he timely received Petitioner's check in the amount of Ninety-nine Thousand Four Hundred Sixty-eight Dollars and Fifty-seven Cents (\$99,468.57). The true contention focuses on a permanent total disability benefit payment in the amount of Nine Hundred Twenty-nine Dollars and Ninety-nine Cents (\$929.99) covering the time period from March 20, 2002 to April 3, 2002.

Respondent was entitled to permanent total disability benefits through March 26, 2002, the date the settlement agreement was approved by the OWC. On March 29, 2002, after the settlement had been approved by the OWC, Respondent received permanent total disability benefits through April 3, 2002 in the amount of Nine Hundred Twenty-nine Dollars and Ninety-nine Cents (\$929.99). As such, he was overpaid permanent total disability benefits by eight (8) days or Five Hundred Thirty-one Dollars and Forty-three Cents (\$531.43).

Pursuant to §32-1515(j) of the Act,

[i]f the employer has made advance payments of compensation, he shall be entitled to be reimbursed out of any unpaid installment or installments of compensation due. All payments prior to an award, to an employee who is injured in the course and scope of his employment, shall be considered advance payments of compensation.

Thus, when the Five Hundred Thirty-one Dollars and Forty-three Cents (\$531.43) is added to the Ninety-nine Thousand Four Hundred Sixty-eight Dollars and Fifty-seven Cents (\$99,468.57) lump sum payment, Respondent was paid for the settlement. Consequently, Petitioner did not violate §32-1515(f) of the Act, and the imposition of penalties pursuant thereto is contrary to law. Any

remaining issues are moot.<sup>2</sup>

#### CONCLUSION

The July 10, 2008 Supplementary Compensation Order Declaring Employer in Default is not in accordance with the law because Petitioner complied with the provisions of §32-1515(f) of the Act.

#### ORDER

The Supplementary Compensation Order Declaring Employer in Default dated July 10, 2008 is VACATED.

FOR THE COMPENSATION REVIEW BOARD:

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MELISSA LIN KLEMENS  
Administrative Appeals Judge

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January 27, 2009  
DATE

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<sup>2</sup>Pursuant to §32-1519(a) of the Act

[i]n case of default by the employer in the payment of compensation due under any award of compensation for a period of 30 days after the compensation is due and payable, the person to whom such compensation is payable may, within 2 years after such default, make application to the Mayor for a supplementary order declaring the amount of the default.

Because there has been no default, the timeliness of Respondent's April 21, 2008 request for a default penalty is moot.